

STATE OF MICHIGAN
COURT OF APPEALS

MEREDITH L. ENSIGN,

Plaintiff-Appellee,

v

RICHARD D. ENSIGN,

Defendant-Appellant.

UNPUBLISHED

December 30, 1997

No. 194167

Wayne Circuit Court

LC No. 95-513132-DM

Before: Michael J. Kelly, P.J., and Cavanagh and N.J. Lambros*, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's granting of a judgment of divorce. Defendant argues on appeal that the trial court erred when it awarded plaintiff half of his pension, that it erred when he was not awarded alimony and that the trial court erred when it fixed his interest in the marital home at \$19,500 without providing for interest. We affirm.

The first issue to be decided is whether defendant's pension was divided fairly and equitably. This Court reviews a trial court's findings of fact under the clearly erroneous standard. If the findings are upheld, then this Court must decide whether the property distribution was fair and equitable in light of those facts. Generally, a ruling will be affirmed unless this Court is left with a firm conviction that the division was inequitable. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992).

Pensions are considered part of the marital estate and are subject to division by the trial court. MCL 552.18(1); MSA 25.98(1). The party seeking to include a pension into the marital estate bears the burden of proving the value of the pension. *Magee v Magee*, 218 Mich App 158, 165; 553 NW2d 363 (1996). If that party does not meet this burden then the pension should not be considered part of the marital estate subject to division. *Id.* In order to determine the present value of a pension, it is necessary to know (1) the amount of the monthly benefit subject to division, (2) the percentage to be awarded to the nonemployee spouse, and (3) when that benefit would begin payment. *Kilbride v Kilbride*, 172 Mich App 421, 437; 432 NW2d 324 (1984).

*Circuit judge, sitting on the Court of Appeals by assignment.

In this case, plaintiff presented proof through her testimony of the monthly benefit received by defendant, she requested half of that benefit and since defendant was already vested in his pension, the benefit began immediately. Plaintiff successfully established the value of the pension. *Id.* The trial court awarded plaintiff half of the pension benefit. After review of the entire record, we are not left with a firm conviction that this distribution was inequitable.

Defendant also argued, regarding his pension, that plaintiff should not have been awarded survivorship rights. However, defendant failed to cite any authority to support his position there this issue is waived. MCR 7.212(C)(7); *Weiss v Hodge (On Remand)*, 223 Mich App 620, 637; 567 NW2d 468 (1977), lv pending.

Next defendant argues that the trial court erred when it did not award him alimony. A trial court has discretion to award alimony as it considers just and reasonable. *Magee, supra*, 218 Mich App at 162. This Court will not modify an alimony award unless it is convinced that it would have reached a different result sitting in the position of the trial court. *Parrish v Parrish*, 138 Mich App 546, 553; 361 NW2d 366 (1984). The award of alimony is within the trial court's discretion and is based on what is just and reasonable under the circumstances. *Thames v Thames*, 191 Mich App 299, 307; 477 NW2d 496 (1991). Although this Court's review of the alimony review is de novo, it must accept the trial court's factual findings unless they are clearly erroneous. *Id.* at 308.

Alimony is provided for in divorce judgments pursuant to statutory law. MCL 552.23; MSA 25.103. The factors that a trial court must consider when determining whether to award alimony include: (1) the past relations and conduct of the parties; (2) the length of the marriage; (3) the ability of the parties to work; (4) the source of and amount of property awarded to the parties; (5) the age of the parties; (6) the ability of the parties to pay alimony; (7) the present situation of the parties; (8) the needs of the parties; (9) the health of the parties; (10) the prior standard of living of the parties and whether either is responsible for the support of others; and (11) general principles of equity. *Parrish, supra*, 138 Mich App at 554.

Upon review of the entire record, we conclude that the trial court did not err when it refused to award alimony to either party. The record clearly established that neither party was in a position to pay alimony. Furthermore, neither plaintiff nor defendant requested alimony in their pleadings or at trial. Therefore, there was no error.

Last, defendant argues that the trial court erred in not granting interest on the judgment regarding his lien on the marital home. This court reviews property distributionary to determine if they are fair and equitable *Sparks, supra*, 440 Mich at 151-152.

In this case, the proofs established that the marital home was worth \$56,500. The parties had \$37,750 in equity in the home. Half of that equity was \$18,875. Defendant was awarded \$19,500. It appears that the trial court was compensating defendant for the use of his equity in the home while

plaintiff remained in the home until the children reached the age of eighteen. Therefore, since defendant received more than half of the equity in the home, the trial court distribution was fair and equitable.

Affirmed. Plaintiff may tax costs.

/s/ Michael J. Kelly

/s/ Mark J. Cavanagh

/s/ Nicholas J. Cavanagh